IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No. 3447 of l994

Ms Mandakini Ramchandra Taru.Petitioner
vs
State of Mah and ors...Respondents
Mr R.K.Mendadkar for petitioner
Mr P I Khemani AGP for State

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 24.6.2005

P.C:

l. The petitioner was employed in the Nagar Parishad Shikshan Mandal, Junnar against reserved category of Scheduled Tribe on the basis of a caste certificate issued by the Executive Magistrate as belonging to ‘Mahadeo Koli’ Scheduled Tribe. The caste claim of the petitioner was referred to the Caste Scrutiny Committee vide letter dated ll.l0.l989. The Committee on examination of the material produced on record, vide order dated 7.2.l994 held that the petitioner does not belong to ‘Mahadeo Koli’ Scheduled Tribe but belongs to ‘Koli’ community and consequently the caste certificate granted to the petitioner was cancelled. The operative part of the order of the Committee reads as follows:

" After considering all the aforesaid documents and in exercise of the powers vested vide Government Resolution quoted in the preamble at Sr Nos l to 3 above the scrutiny committee has come to the conclusion that Smt Mandakini Ramchandra Taru does not belong to the Mahadeo Koli, Scheduled Tribe community and as such her claim towards the said is held invalid. She belongs to the caste Koli and as such the caste certificate of her belonging to the Mahadeo Koli Scheduled Tribe community granted by the Executive Magistrate Ambegao vide No MAG/SR/CASTE/l98l, dated l8.4.l98l is hereby cancelled. The Executive Magistrate is directed to obtain the original caste certificate and confiscate the same, under intimation to this committee".

2. Mr Mendadkar, learned counsel appearing for the petitioner did not press the challenge to the order of the scrutiny committee. He, however, contended that the petitioner is entitled to the benefit of the Government Resolution dated l5.6.l995 protecting the services of persons who are falling

in the special category mentioned in the said Government Resolution. By the said G.R. the caste "Koli" has been declared by the State Government as "Special Backward Class". Paragraph 4 of the said GR dated l5.6.l995 reads as follows:

> "4. The reservation granted to the abovequoted "Special Backward Class" is applicable to the Direct Recruitment and also promotions. Similarly the principle of Creamy layer shall not apply to this class. The persons belonging to this class already recruited on the basis of S.T.Certificate in Government, Semi- Government services and obtained promotions should not be reverted or terminated"

3. It is apparent from the bare reading of paragraph 4 of the Government Resolution that the reservation granted to "Special Backward Class" is applicable to the direct recruitment and also promotions and the persons belonging to this class already recruited on the basis of the Scheduled Tribe certificate in the Government ,Semi Government services and obtained promotion,shall not be reverted or terminated.

4. There is no dispute before us that the respondent no. 2 is bound to follow the mandate of the said Government Resolution and extend the promotions to its employee. The said Government Resolution fell for consideration of the Division Bench of this court in Writ Petition No.l84l of l999(decided by N J Pandya and J A Patil JJ. on 30.l2.l999) . The Bench held as follows:-

> "When the first part of the said Government Resolution is read in conjunction of the later part, in our opinion, it is quite obvious that though in the later part, a candidate being recruited and obtained promotion can be read in conjunction but when paragraph is read in its entirety, it is quite obvious that this part is also to be read disjunctively and not conjunctively. In other words, paragraph does not protect only those cases where after recruitment and promotion having been obtained they will not loose the job.
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> As regards the Government Resolution it is quite obvious that in respect of the Special

> Backward Class,a question, as carved out by this G.R. whether those persons are eligible to get protection when already they have got employment as said in the GR and later on a question would arise whether they are protected or not. The internal promotion,in our opinion, therefore is not a requirement of being eligible for getting benefit of the said GR"

5. A similar view is taken by the Division Bench in Writ Petition No.2l39 of l997 in the case of Shri Sunil Laxman Palase vs State of Maharashtra and ors (decided by V.P Tipnis and Y S Jahagirdar JJ on 28th April l997).

6. In the light of the above decisions of this court petitioner’s services are liable to be protected in terms of the G R dated l5.6.l995. There is no dispute that the petitioner had been in the employment prior to the issuance of the G.R. dated l5.6.l995. In the result the order of the Scrutiny Committee is confirmed. However, it is directed that the petitioner’s services shall not be terminated on the ground that the caste claim of the petitioner was invalided by the committee. It

is needless to say that the petitioner and the members of his family will not be entitled to claim any benefit available to Scheduled Tribe in future. Rule is partly made absolute with no order as to costs.